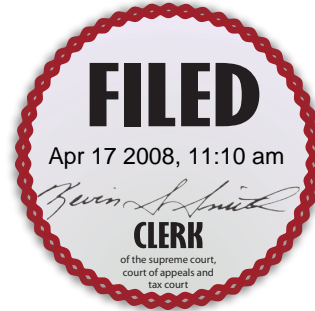


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

R.C.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0707-JV-377
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0702-JD-518

April 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

R.C. appeals his adjudication as a delinquent child. The stop of the vehicle in which he was riding did not violate his constitutional rights, and testimony a police officer saw him throw a box containing cocaine was sufficient to support his adjudication. Accordingly, we affirm.¹

FACTS AND PROCEDURAL HISTORY

Around 3 a.m. on January 12, 2007, seventeen-year-old R.C. was riding in the front passenger seat of a Buick LeSabre driven by Michael Jefferson. DeJuan Morris was asleep in the back seat. Indianapolis Metropolitan Police Department Officer Roger Gammon was driving westbound on Gimber when he saw the LeSabre approaching eastbound. The LeSabre was traveling so far left of center that Officer Gammon could not continue traveling westbound without running into the LeSabre. Officer Gammon stopped and turned on his lights, and the LeSabre stopped in front of his police cruiser.

Jefferson admitted he did not have a driver's license. Officer Gammon informed

¹ Our review of this case was delayed by Appellant Counsel's failure to provide a copy of the final order signed by Judge Moores. As this has become a persistent and ongoing problem in appeals from the juvenile court in Marion County, and has also occurred in appeals from other counties, we make the following observations.

Where a magistrate's decision is to be reviewed by a judge who enters a final order, an order signed only by a magistrate is not final and does not confer jurisdiction on this court. Accordingly, all appellate counsel, regardless of county of practice, need to ensure the final order provided this court, especially if printed from an electronic docketing system, includes the signature of a judge. An order that contains "%%%" does not meet that requirement.

When we issued an Order to Show Cause in this case, the Appellate Division of the Marion County Public Defender Agency responded on behalf of R.C. They asserted: "The attached final Order with Judge Moore's signature was available at the back of the Appellant's Case Summary." That was incorrect. The copy of the order included with the Appellant's Case Summary contained "%%%" instead of Judge Moores' signature. We appreciate the Appellate Division may be frustrated by the consistent need to respond to Orders to Show Cause; we are frustrated by the continual need to issue them. They delay disposition of child cases, which our rules require us to expedite to protect the interests of children.

Jefferson he was under arrest for operating a vehicle without a license. Because neither R.C. nor Morris had a license, Officer Gammon removed all three of them from the car and asked them to sit on the front bumper of his police cruiser. R.C. sat to the left of the Jefferson and Morris. Officer Gammon called for a tow truck and began an inventory search of the LeSabre, which was not registered to any of the three young men.

While conducting the search, Officer Gammon saw R.C. “make a slight throwing motion with his left hand,” (Tr. at 76), and a red box from R.C.’s hand landed two or three feet left of R.C. Inside the red box, Officer Gammon found 4.1078 grams of cocaine. He also found digital scales between the driver and passenger seats of the LeSabre. He then arrested R.C.

On February 26, 2007, the State alleged R.C. was a delinquent child for possessing cocaine, which would be a Class C felony if committed by an adult. *See* Ind. Code § 35-48-4-6. R.C. moved to suppress all the evidence, claiming Officer Gammon had no basis for the initial stop of the car. After a hearing, the court denied his motion. The court found R.C. had possessed cocaine and accordingly was a delinquent child. The court placed R.C. on probation with special conditions.

DISCUSSION AND DECISION

1. Constitutionality of Stop

R.C. claims the court erred in admitting evidence collected after the car was stopped because the stop violated the United States and Indiana constitutions. Because admission of evidence falls within the sound discretion of the trial court, we review its decision only for an abuse of discretion. *Datzek v. State*, 838 N.E.2d 1149, 1154 (Ind. Ct.

App. 2005), *trans. denied* 855 N.E.2d 1006 (Ind. 2006). An abuse of discretion occurs when the court's decision is "clearly against the logic and effect of the facts and circumstances." *Id.* (quoting *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001)).

A. Fourth Amendment

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. *Cannon v. State*, 839 N.E.2d 185, 191 (Ind. Ct. App. 2005), *summarily aff'd* 866 N.E.2d 770, 774 (Ind. 2007). Nevertheless, a police officer may detain a person briefly to investigate without a warrant or probable cause "if the stop is based upon specific and articulable facts together with rational inferences from those facts, the intrusion is reasonably warranted, and the officer has reasonable suspicion that criminal activity may be afoot." *Id.* When determining whether reasonable suspicion existed, we consider whether the totality of the circumstances offer a particularized and objective basis for suspecting legal wrongdoing. *Barrett v. State*, 837 N.E.2d 1022, 1027 (Ind. Ct. App. 2005) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)), *trans. denied* 855 N.E.2d 995 (Ind. 2006). An officer had reasonable suspicion if "the facts known to the officer at the moment of the stop, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur." *Cannon*, 839 N.E.2d at 191.

On appeal, we review reasonable suspicion determinations "*de novo*, rather than for 'abuse of discretion.'" *Arvizu*, 534 U.S. at 275. Nevertheless, "a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law

enforcement officers.” *Ornelas v. United States*, 517 U.S. 690, 699 (1996). In addition, “[a]n appeals court should give due weight to a trial court’s finding that the officer was credible and the inference was reasonable.” *Id.* at 700.

Officer Gammon testified he stopped the LeSabre because it was left of the center of the road and his car could not pass in the opposite direction. R.C. asserts Officer Gammon could not have had reasonable suspicion to stop the LeSabre because two cars cannot pass on Gimber Street in places where cars are parked on both sides of the street. To support this argument, R.C. submitted photographs taken where the traffic stop occurred, but on a later date. In one picture, cars were parked on each side of the street, and a truck was traveling in the remaining space in the center of the road.

Officer Gammon testified as follows:

[Counsel]: East Gimber is not a very wide street, correct?

[Gammon]: No ma’am it is not.

[Counsel]: Okay and it becomes even more narrow when there are cars parked on both sides of the street, correct?

[Gammon]: Absolutely ma’am, without question

[Counsel]: In your experience as a patrolman, what would you say the typical width of a city street is?

[Gammon]: I am not sure. That street, I will try to say it is...there is enough room for cars to go East and West with cars parked on both sides of the street but there is not a lot of elbow room[.]

[Counsel]: So you believe two cars can pass each other without brushing...

[Gammon]: I know they can. Yes ma’am without question.

(Tr. at 27.)

Defense counsel showed Officer Gammon the picture of Gimber Street with a truck traveling in the middle of the street, and asked him whether he believed the truck

was committing a traffic infraction by driving left of center. Officer Gammon responded:

. . . In this particular case, the way these vehicles are lined on this particular day, uh I don't know that there would be room for two cars to get through. So on this particular case, my answer would be no but on the date of the incident there was room for both vehicles to get through.

(*Id.* at 31.)

The trial court's denial of R.C.'s motion to suppress suggests it found Officer Gammon's testimony credible. Giving due deference to the trial court's authority to assign credibility and weigh evidence, Officer Gammon's testimony provided reasonable suspicion the LeSabre was driving too far to the left as it traveled on Gimber Street. Therefore, the court did not abuse its discretion when it admitted the evidence seized after the stop.

B. Article I, Section 11

Article I, Section 11 provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated" The purpose of this Section is "to protect from unreasonable police activity those areas of life that Hoosiers regard as private." *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). We are to liberally construe this provision, and the State has the burden to demonstrate an intrusion was reasonable under the totality of the circumstances. *Id.*

We review a ruling on a motion to suppress similarly to other sufficiency questions. *Id.* We may not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. *Id.* If the record discloses substantial evidence

of probative value supporting the trial court’s decision, we must affirm. *Id.*

“A traffic violation, however minor, creates probable cause to stop the driver of the vehicle.” *Id.* Ind. Code § 9-21-8-2(a) provides: “Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway”² The facts most favorable to the court’s ruling were Officer Gammon’s repeated testimony that two cars could have passed in opposite directions on Gimber Street on the night in question. In light of his testimony, we find no error in the court’s decision.

2. Sufficiency of Evidence

When reviewing whether the evidence is sufficient to support an adjudication, “we consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom.” *J.D.P. v. State*, 857 N.E.2d 1000, 1010 (Ind. Ct. App. 2006), *trans. denied* 869 N.E.2d 449 (Ind. 2007). We may neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* If the evidence and inferences “constitute substantial evidence of probative value” demonstrating guilt beyond a reasonable doubt, we will affirm. *Id.*

The petition alleged R.C. had been in possession of cocaine. Class C felony possession of cocaine occurs when one “knowingly or intentionally possesses cocaine . . . [in an amount weighing] three (3) grams or more” Ind. Code § 35-48-4-6. Officer Gammon saw R.C. toss a red box that landed about three feet to R.C.’s left. The red box contained 4.1078 grams of cocaine. This evidence is sufficient to prove the allegation

² That subsection contains four exceptions to that general rule; however, none of those exceptions apply here.

beyond a reasonable doubt. *See Womack v. State*, 738 N.E.2d 320, 324 (Ind. Ct. App. 2000) (Evidence was sufficient for possession conviction where, after seeing defendant remove something from his pocket and make a throwing motion, officers found a bag of marijuana in the direction defendant threw.), *trans. denied* 753 N.E.2d 3 (Ind. 2001).

R.C. notes contradictory testimony from Morris, who claimed R.C.'s hands were handcuffed behind his back and he had not seen a red box in R.C.'s possession all evening. However, we may not consider this evidence while conducting our review, as it is not favorable to the judgment. Neither may we consider it more credible than Officer Gammon's testimony, as decisions regarding witness credibility are within the province of the fact finder. *Id.* at 323.

R.C. also claims Officer "Gammon's own testimony establishes his version of the events is less credible." (Appellant's Br. at 15.) In support, R.C. notes Officer "Gammon admitted he did not see the red box in R.C.'s possession when R.C. exited the vehicle." (*Id.*) Nor did Officer Gammon see R.C. reach into his pocket. That Officer Gammon did not see R.C. reach into his pocket does not preclude the inference that R.C. had the box or the fact that Officer Gammon saw R.C. throw it. Officer Gammon's testimony was not "so incredibly dubious or inherently improbable that no reasonable person could believe it," *Fajardo v. State*, 859 N.E.2d 1201, 1209 (Ind. 2007), and we may not invade the trial court's finding R.C. held and threw the box containing the cocaine. Accordingly, we affirm.

Affirmed.

RILEY, J., and KIRSCH, J., concur.